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November 5, 1998

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FEDERAL COMMUNICATIONS COMMISSION  
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BY HAND DELIVERY

Magalie Salas, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
12th Street Lobby, Room TW-A325  
Washington, D.C. 20554

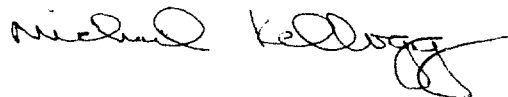
Re: In the Matter of Federal-State Joint Board on Universal Service, Pacific  
Bell's Petition for Expedited Waiver of the Stacking Order on Discounts to  
Schools and Libraries, CC Docket No. 96-45, DA 98-1999

Dear Ms. Salas:

Please find enclosed for filing an original and six copies of Pacific Bell's Reply  
Comments in Support of Its Petition For an Expedited Waiver in the above-captioned  
proceeding.

Please date-stamp and return the extra copy provided to the individual delivering this  
package.

Sincerely,



Michael K. Kellogg

Enclosures

No. of Copies rec'd  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	DA 98-1999
	)	
Pacific Bell's Petition for Expedited	)	
Waiver of the Stacking Order on	)	
Discounts to Schools and Libraries	)	

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**REPLY COMMENTS OF PACIFIC BELL IN SUPPORT  
OF ITS PETITION FOR AN EXPEDITED WAIVER**

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Although the State of California and the California Public Utilities Commission (collectively "California") have filed an opposition to Pacific Bell's requested temporary waiver, they have not challenged the four critical facts that support a grant of that waiver through the first funding cycle of the schools and libraries program (i.e., through July 1, 1999).

First, unless the waiver is granted, every school and library in California that is approved for E-Rate benefits will have to calculate their request for retroactive reimbursement based on prediscount prices and submit their Billed Entity Applicant Reimbursement Form to the Schools and Library Corporation ("SLC") no later than January 31, 1999. Schools and libraries requesting retroactive reimbursement must certify that the amount requested for retroactive reimbursement was billed and paid in full at the prediscount rate. Schools and libraries that have received discounts since the beginning of 1998 may be required to reimburse the state fund for as

much as 80% of the benefit they initially received from the state.<sup>1</sup> These are monies that have already been spent by the schools and libraries for eligible telecommunications services.

Second, many schools and libraries were billed for, and would have relied upon, the discounted price of service, rather than the prediscount tariff price, in their applications for federal support. That is, their applications to the SLC would have already reflected the state discount. As a result, those schools and libraries will be approved for less federal support by the SLC than they are entitled to receive. There is no opportunity for these schools and libraries to resubmit their applications for federal support using a pre-discounted price in the 1998 program year because all federal funds will be committed based on only those applications submitted during the 1998 filing window which ended on April 15, 1998. Thus, they would be required to reimburse the state fund but would be unable to obtain additional federal funding. The money would have to come out of their already-strapped, general operating budgets.

Third, the problems noted above are not the fault of the service providers or of the schools and libraries. Obviously, they could not comply with the requirement to apply federal discounts before state discounts because, due to unanticipated administrative and regulatory delays in implementing the federal program, federal discounts were not known on January 1, 1998. They had no choice but to proceed under the state program or forego those benefits

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<sup>1</sup> Instead of the 50% discount off the tariffed price that they received from the states, the schools and libraries would be entitled only to 50% off the amount remaining after the federal discount. Accordingly, if the federal discount is 80%, the schools and libraries would have to reimburse the state for 40% of the tariffed price, or 80% of the amount they received from the state.

altogether. There is no way they could anticipate what the federal discount would be, and they now need a reasonable period of adjustment to build their systems, until the next federal funding year, to build their systems for the program rules just now being finalized.<sup>2</sup>

Fourth, if the waiver is granted, California will not be out any money that it did not already authorize to be spent on its schools and libraries program. If there had been no federal program, California would have willingly spent these same amounts in support of the schools and libraries in its State. Indeed, California deliberately chose not to adjust or temporarily discontinue the state funding mechanism until such time as the federal program was initiated. Had it done so, the discounts could have been applied in the required order, and all schools would have received the correct amount of federal and state funding to which they are entitled. Having chosen to proceed regardless of delays in the federal program, California should not be heard to complain if its discount was applied first, prior to the federal discount.

In short, there is a compelling case for a waiver here. It will save millions of dollars in administrative costs. It will save California schools and libraries who relied on the state

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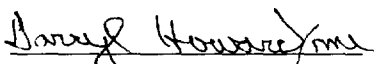
<sup>2</sup>California claims that Pacific Bell "was on notice as early as 1997, when the FCC issued its Fourth Reconsideration Order, that Pacific would need to coordinate the implementation of federal discount programs with state discount programs." California Comments at 5-6. As an initial matter, this Commission did not issue its Fourth Order on Reconsideration, 13 FCC Rcd 5318, until December 30, 1997, just two days before the discount period at issue here began. More fundamentally, general notice that federal discounts were to be applied before state discounts was completely unhelpful in the absence of a determination of the specific amount of the federal discounts. Pacific Bell could not refuse to give discounts under the state program, pending completion of the federal program. As of January 1, 1998, Pacific Bell was compelled by state law to apply state discounts to eligible services provided to schools and libraries, and it was impossible for Pacific to apply those discounts to anything other than the tariff rates because Pacific had no clue what the federal discounts would be. Thus, it was literally impossible for Pacific to "anticipat[e] and mitigat[e] any expense" (California Comments at 7) caused by the delays in implementing the federal program.

discounts in applying for federal support from a potentially crushing repayment obligation. And it will not cost the State of California any more money than the State was already prepared to commit to its schools and libraries. California, because of its size, presents the most extreme and compelling case for a waiver. But a similar waiver should be granted for every state with a pre-existing discount program that was in place effective on January 1, 1998. The problems will be the same in every such state.

The idea behind this waiver request is not to "penalize states that have implemented support programs for schools and libraries by reducing the level of federal support that those schools and libraries would receive" (13 FCC Rcd at 5432), but simply to find a way of dealing with a problem not of the service providers' or the schools and libraries' making. The waiver would be limited in scope, and would apply only to the first funding cycle (through July 1, 1999). By that time, everyone -- schools, libraries, service providers, and states -- will know the applicable federal rules and be able to adjust accordingly. The schools and libraries program will then function as it was intended.

Respectfully submitted,

PACIFIC BELL

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November 5, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of November 1998, I caused copies of the foregoing Reply Comments of Pacific Bell in Support of Its Petition For an Expedited Waiver to be served upon the parties listed below by first-class mail.

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